



Oregon

Tina Kotek, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5696
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October 24, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 4247

City of The Dalles
c/o Matthew Klebes, City Manager
313 Court Street
The Dalles, OR 97058

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/M-ER-2023-005

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued the City of The Dalles a civil penalty of \$35,616 for discharging untreated sewage in violation of the bacteria water quality standard, violating its wastewater permit by exceeding an *E. coli* bacteria effluent limit, and for failing to conduct effluent monitoring required by the permit.

DEQ issued this penalty because the violations caused a risk of harm to human health and the environment. Specifically, the discharge of approximately 100,000 gallons untreated sewage to Mill Creek posed a threat to public health. In addition, discharging effluent that contains bacteria in excess of permit limits also creates a risk to public health. Finally, by failing to conduct required monitoring, you deprived DEQ and the public of information to determine whether you are compliance with Permit requirements.

If you wish to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – DEQappeals@deq.oregon.gov

Via fax – 503-229-6762

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor instead of paying a portion of the penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Jeff Bachman at 503-229-5950 or toll free in Oregon at 800-452-4011, extension 5950.

Sincerely,

A handwritten signature in black ink, appearing to read "Kieran O'Donnell".

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Justin Sterger, DEQ
Mike Hiatt, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:
CITY OF THE DALLES,

Respondent.

) NOTICE OF CIVIL PENALTY
) ASSESSMENT AND ORDER

) CASE NO. WQ/M-ER-2023-005

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS Chapters 183 and 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011 and 012.

II. FINDINGS OF FACT

1. Respondent operates wastewater collection, treatment and disposal facilities in The Dalles, Oregon, pursuant to a National Pollutant Discharge Elimination System (NPDES) Permit (the Permit) issued and administered by DEQ. The Permit was in effect at all material times.

2. The Permit authorizes Respondent to operate its wastewater collection, treatment, and disposal system and to discharge treated wastewater to waters of the state only in conformance with the limitations, requirements, and conditions of the Permit.

3. ORS 468B.025(1)(b) prohibits any person from discharging wastes "if the discharge reduces the quality of such waters below the water quality standards established by rule for such waters by the Environmental Quality Commission."

4. The water quality standard established in OAR 340-041-0009(3) states: "No sewage may be discharged into or in any other manner be allowed to enter the waters of the State, unless such sewage has been treated in a manner the Department approved or otherwise allowed by these rules."

5. For an approximately one-week period prior to September 23, 2022, Respondent discharged an estimated 100,800 gallons of untreated sewage from a sewage bypass pipe to Mill Creek in The Dalles, Oregon.

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6. Schedule A, Condition 1.a.i of the Permit limits the concentration of *E. coli* bacteria in any single sample of Respondent's effluent to 406 organisms per 100 milliliters per liter (mL) of effluent.

7. Single samples of Respondent's effluent contained *E. coli* concentrations as follows:

Date	Concentration in organisms per 100 mL
July 11, 2022	>2,419
July 12, 2022	549
July 12, 2022	488
July 12, 2022	501
July 14, 2022	> 2,419
July 14, 2022	411
July 14, 2022	830
July 14, 2022	1,414

8. Schedule B, Table B3 of the Permit requires Respondent to monitor its effluent for *E. coli* twice per week.

9. During the week of April 24, 2022, Respondent monitored its effluent for *E. coli* only once.

10. Schedule B, Condition 1 of the Permit states that Respondent must, by December 31 of each year, monitor its effluent for the parameters listed in Tables B6, volatile organic compounds, and B9, pesticides and PCBs, of the Permit.

11. Respondent did not complete, by December 31, 2021, monitoring of the 31 parameters in Table B6 and the following parameters of Table B9 of the Permit: Demeton, Malathion and Parathion.

12. Schedule B, Condition 10 of the Permit required Respondent to monitor its effluent for the eight parameters listed in Table B15 of the Permit in May and November of 2022 (year three of the Permit).

13. Respondent did not monitor its effluent for the parameters listed in Table B15 of the Permit in May and November 2022.

14. Respondent did conduct effluent monitoring for the Table B15 parameters in January 2023 to partially make up for one round of the monitoring missed in 2022.

III. CONCLUSIONS

1. Respondent violated ORS 468B.025(1)(b) by discharging sewage, a waste pursuant to ORS 468B.005(9), to Mill Creek, a water of the state pursuant to ORS 468B.005(10) and by doing so reduced water quality in the creek below the water quality standard adopted by the Environmental Quality Commission at OAR 340-41-0009(3), as described in Section II, Paragraphs 4 and 5 above. These are Class I violations, according to OAR 340-012-0055(1)(b). DEQ assesses a \$10,800 civil penalty for these violations.

2. Respondent violated ORS 468B.025(2) by discharging effluent with *E. coli* concentrations in excess of the limit established in Schedule A of the Permit, as described in Section II, Paragraphs 6 and 7 above. Those instances where Respondent exceeded the limit by five times or more are Class II violation, according to OAR 340-012-0055(2)(a)(C). Those instances where the limit was exceeded by a factor of less than five are Class III violations pursuant to OAR 340-012-0055(3)(b)(C). DEQ assesses a \$2,700 civil penalty for these violations.

3. Respondent violated ORS 468B.025(2) by failing to conduct monitoring as required by Schedule B of the Permit. Respondent failed to conduct required effluent monitoring for *E. coli*; volatile organic compounds in Table B6; pesticides and PCBs in Table B9; and one round of the parameters listed in Table B15 of the Permit as described in Section II, Paragraphs 8 through 13, above. These are Class I violations, according to OAR 340-012-0055(1)(o). DEQ assesses a \$22,116 civil penalty for these violations.

1 4. Respondent violated ORS 468B.025(2) by failing to timely complete effluent monitoring
2 required by Schedule B, Condition 1 of the Permit. Respondent failed to timely complete one round of
3 monitoring for the parameters in Table B15 of the Permit as described in Section II, Paragraphs 12-14
4 These are Class II violations pursuant to OAR 340-012-0053(2). DEQ does not assess a civil penalty for
5 these violations.

6 IV. ORDER TO PAY CIVIL PENALTY

7 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
8 hereby ORDERED TO: Pay a total civil penalty of \$35,616. The determinations of the civil penalties are
9 attached as Exhibits 1, 2, and 3 and are incorporated as part of this Notice.

10 If you do not file a request for hearing as set forth in Section V below, your check or money
11 order must be made payable to "**Department of Environmental Quality**" and sent to the **DEQ,**
12 **Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

13 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

14 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
15 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
16 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
17 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
18 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
19 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
20 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232,** fax
21 it to **503-229-6762** or email it to **DEQappeals@deq.oregon.gov**. An administrative law judge
22 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
23 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
24 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
25 you may represent yourself. If you are a corporation, partnership, limited liability company,
26 unincorporated association, trust or government body, you must be represented by an attorney or a duly
27 authorized representative, as set forth in OAR 137-003-0555.

Active duty Service members have a right to stay proceedings under the federal Service Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

If you fail to file a timely request for hearing, the Notice will become a final order by default without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including information submitted by you, as the record for purposes of proving a prima facie case.

10/24/2023
Date



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION NO. 1 Discharging a waste that reduced the quality of state waters below a water quality standard established by the Environmental Quality Commission in violation of ORS 468B.025(1)(a).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(a).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140 (3)(a)(E)(i) because Respondent's facility has a permitted flow of 2 million gallons or more, but less than 5 million gallons per day.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10 according to OAR 340-012-0145(2)(a) because Respondent has prior significant actions consisting of nine or more Class I equivalent violations stemming from Case No. WQ/M-ER-2021-137.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were seven or more, but less than 28 occurrences of the violation. The violation continued for seven days.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Respondent's failure to maintain the bypass pipe, that failed and led to the violation, constituted a failure to take reasonable care to avoid a foreseeable risk that the violation would occur.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 as DEQ has insufficient information to arrive at reasonable estimate of avoided or delayed compliance costs.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$4,000 + [(0.1 x \$400) x (10 + 0 + 3 + 4 + 0)] + \$0
= \$4,000 + (\$400 x 17) + \$0
= \$4,000 + \$6,800 + \$0
= \$10,800

EXHIBIT 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION NO. 2 Exceeding the Permit effluent for bacteria in violation of ORS 468B.025(2).
- CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(a)(C).
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(2)(a)(C)(i) as Respondent's effluent was diluted by a factor of 10 or more by receiving stream.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$1,000 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140 (3)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140 (3)(a)(E)(i) because Respondent's facility has a permitted flow of 2 million gallons or more, but less than 5 million gallons per day.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10 according to OAR 340-012-0145(2)(a), because Respondent has prior significant actions consisting of nine or more Class I equivalent violations stemming from Case No. WQ/M-ER-2021-137.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. Respondent violated the *E. coli* concentration limit on eight occasions as follows: July 11, thrice on July 12, and four times on July 14.
- "M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. The bacteria effluent limit is an express condition of the Permit. By failing to take the action necessary to comply with the limit Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 as DEQ has insufficient information as to the amount of delayed or avoided costs to arrive at a reasonable estimate of EB.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$1,000 + [(0.1 x 1,00) x (10 + 0 + 3 + 4 + 0)] + \$0
= \$1,000 + (\$100 x 17) + \$0
= \$1,000 + \$1,700 + \$0
= \$2,700

EXHIBIT 3

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION NO. 3 Failure to comply with Permit monitoring requirements in violation of ORS 468B.025(2).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(o).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140 (3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140 (3)(a)(E)(i) because Respondent's facility has a permitted flow of 2 million gallons or more, but less than 5 million, gallons per day.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10 according to OAR 340-012-0145(2)(a), because Respondent has prior significant actions consisting of nine or more Class I equivalent violations stemming from Case No. WQ/M-ER-2021-137.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were seven or more but less than 28 occurrences of the violation per violation penalized. The number of occurrences per violation is arrived at by dividing the total number of occurrences, 43 as detailed in the Notice, by the number of violations penalized, 2, for a result of 21.5 occurrences per violation penalized.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. The monitoring requirements are express conditions of Respondent's Permit. By failing to take the action necessary to conduct the monitoring, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$520. This is the amount Respondent gained by avoiding \$516 in analytical costs for the monitoring it did not complete. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

SINGLE VIOLATION PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})]$

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (10 + 0 + 3 + 4 + 0)] \\ &= \$4,000 + (\$400 \times 17) \\ &= \$4,000 + \$6,800 \\ &= \$10,800 \end{aligned}$$

The final penalty is arrived at by multiplying the number of violations penalized, 2, by the result of the single penalty calculation, \$10,800, and adding the economic benefit, \$516.

$$\$10,800 \times 2 + \$516 = \$22,116$$